

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Lifeline and Link Up Reform and Modernization)	WC Docket No. 11-42
)	
Lifeline and Link-Up)	WC Docket No. 03-109
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Advancing Broadband Availability Through Digital Literacy Training)	WC Docket No. 12-23
)	

**Comments of the Montana Telecommunications Association
in Support of
USTELECOM et al. Petition for Waiver and Clarification
of Lifeline Reform Order**

The Montana Telecommunications Association (“MTA”) represents rural eligible telecommunications carriers (“ETCs”) serving nearly 90 percent of Montana’s wireline consumers. MTA’s members include small and large telecom providers, both member-owned telephone cooperatives and shareholder-owned commercial companies. All of these companies actively provide and promote the federal, and state, Lifeline Program.

MTA supports the petition filed on March 9, 2012, by USTelecom, *et al.*, which seeks a waiver of the Lifeline Order’s effective date(s) and clarification of certain provisions therein. In fact, because of the widespread confusion that the Order has created among carriers, state commissions and consumers alike, and because of the need to amend both regulatory and statutory provisions in Montana, MTA would recommend postponing further the implementation of this Order until eligibility databases established by the Order are fully operational, and all states, carriers and consumers have an opportunity fully to understand

and adopt changes (including both regulatory and statutory amendments) that they need to implement to comply with the many new rules contained in the Order.¹

As with USTelecom, *et al.* (“Petitioners”), MTA generally supports the long-term goal of the *Lifeline Order* to reduce waste, fraud and abuse in the Lifeline Program.²

However, the new rules have led to considerable confusion among carriers and state commissions alike. There are multiple effective dates (April 1 for some provisions; April 2 for others; June 1 for yet others; six months after adoption for others still; and upon OMB approval for most). Carriers are supposed to rely on new databases that have yet to be established. Meanwhile, particularly in states like Montana which rely on eligibility verification provided by state agencies (e.g., the Montana Department of Public Health and Human Services, or “DPHHS”), carriers now may be expected to establish new procedures for verifying eligibility based on a host of income- and program-based eligibility criteria not adopted at the state level. Carriers now apparently are required to comply with federal rules in violation of state statute and/or regulations. Further, it appears that the Order requires consumer disclosures *after* carriers already are implementing the Order. Such implementation effectively reduces the Lifeline subsidy eligible consumers will receive in Montana; yet, rather than informing consumers of changes yet to come, the

¹ MTA notes that the numerous new rules contained in the *Lifeline Order* arrive concurrently with the comprehensive changes the Commission has adopted in the universal service *Transformation Order*. Most ETCs do not have the resources necessary to digest, analyze and implement the massive changes of the *Transformation Order*, let alone additional proposed changes in the *Further Notice* accompanying the *Transformation Order*. And now, these carriers need to set aside even more resources to digest and implement additional changes imposed by the *Lifeline Order*, not to mention additional potential reforms recommended in the *Lifeline Order’s Further Notice*.

² MTA remains deeply concerned with the uncontrolled growth of the Lifeline Program and believes that the savings anticipated in *Lifeline Order* pale in comparison to the effects of the *Order* on the continued rampant growth of the Program.

Order transposes these vital public information disclosures.³ Moreover, a revised federal Form 497, upon which compliance depends, is not even available.

Furthermore, Montana state statute provides a \$3.50 state Lifeline subsidy to eligible consumers—i.e., Medicaid recipients as verified by the Montana DPHHS. It is unclear whether this program will continue to be based on Medicaid eligibility only or whether state Lifeline eligibility criteria should mirror the new federal rules. If the latter, then state statute will need to be amended; and as anyone familiar with the legislative process knows, there's no guarantee that efforts to amend the statute to conform to federal rules will be successful. If, on the other hand, state Lifeline program eligibility remains the same, then there may be another set of eligibility criteria, further complicating compliance by carriers, and confusing consumers.⁴

MTA understands the Commission's sense of urgency in putting an end to the duplicate support crisis that has afflicted the Lifeline Program since the Program's "wireless expansion;"⁵ however we question why the Commission appears to be in such a rush to push through yet another set of major new, "emergency" reforms, when a more measured approach would be far less disruptive to consumers and ETCs alike.

As the Petitioners point out, postpaid ETCs in many states—including Montana---will need to amend their tariffs to reflect a new flat-rate Lifeline subsidy of \$9.25. Moreover,

postpaid ETCs must modify their billing systems, update manual procedures, and complete employee training in order to implement the

³ Consumer disclosure deadlines are not the only deadlines that are transposed. For example, the Commission, has requested emergency review and approval by the Office of Management and Budget ("OMB") of information collection requirements (by march 30, 2012) *before* the OMB comment deadline of April 5, 2012.

⁴ The Order already establishes separate mechanisms for Tribal Lifeline support.

⁵ See letter from U.S. Senator Claire McCaskill to Julius Genachowski, Chairman, Federal Communications Commission, December 9, 2011, in which Sen. McCaskill states that she "remain[s] troubled by the expansive potential for the program to be abused" and requests data on the "substantial increase in disbursements" of the program "since the wireless expansion."

new requirements in the *Order*. These tasks cannot realistically be completed within the relatively short time period (less than 60 days) contemplated under the *Order*. (Petition, p.2)

Accordingly, Petitioners request that the Commission waive the effective date of the flat rate \$9.25 Lifeline subsidy to October 1, 2011, which is the same date by which carriers must implement new consumer disclosures mandated by the *Order*.⁶

Petitioners further request clarification of §54.407 of the new rules set forth in Appendix A of the *Lifeline Order*. Absent such clarification, Petitioners assert,

ETCs would be put in an untenable position of being unable to provide the required certification through no fault of their own, jeopardizing continued participation in the Lifeline program and the ability of their low-income customers to continue receiving Lifeline benefits. [Petition, p. 3]

As noted, Petitioners indicate that ETCs must design and implement a number of operational changes to comply with the *Order*. For example,

ETCs must modify their billing systems, internal procedures, and employee training materials...Petitioners' members estimate that it would take more than 120 days to make the system, procedural and program modifications necessary to implement the *Order*. [Petition, p. 6]

The *Petition* discusses a number of additional changes to the Tribal Lifeline and Link Up programs that complicate compliance, noting that

additional work to change the ETC's billing systems, tariffs, and customer support procedures will be required, which cannot reasonably be completed by the April 1, 2012 deadline. [Petition, p. 7]

⁶ Petitioners also seek to waive the effective dates of the elimination of the Link Up discount and Tribal Link Up changes.

Petitioners also request the Commission for clarification of §54.407(d) as it applies “in states that have automatic enrollment procedures” for determining Lifeline eligibility. The Commission, Petitioners note, requires such states to modify their programs to comply with the Lifeline Order. As Petitioners point out,

unless and until a state modifies such programs, ETCs will not have any ability to verify eligibility prior to the subscriber being enrolled in Lifeline. This is also the case in states that have coordinated enrollment programs such that ETCs are not involved in the Lifeline eligibility determination but are only told by the state who to enroll in the program.

Montana may be considered a “hybrid” coordinated enrollment state. As such, MTA supports the Petitioners’ request for clarification that §54.407 does not require ETCs to certify that they have confirmed a subscriber’s eligibility since such verification is out of their hands—at least in the context of Montana’s Medicaid eligibility verification procedures.

MTA also supports Petitioners’ request for clarification that ETCs may certify compliance with the rules “that are in effect at the time of the reimbursement request.”⁷ Such a clarification would go far toward alleviating the widespread concerns and confusion caused by the *Order’s* many and potentially conflicting effective dates.

In addition to the concerns mentioned above, MTA members are concerned that the one-per-household rule may take time to effectuate.⁸ While the rule is laudable, putting it to practice may require substantial design and

⁷ While certification of compliance with rules “in effect at the time of the reimbursement request” would help mitigate some concerns about compliance, such clarification does not address whether ETCs in either “automatic” or “coordinated” enrollment states need to amend their eligibility verification procedures to conform to the new, expanded income- and program-based eligibility criteria. The rules (§54.410) appear to exempt ETCs from various eligibility and certification obligations while imposing obligations on state agencies. One interpretation is that ETCs in such states do not need to seek consumer verification of additional income- or program-based eligibility; but this interpretation seems inconsistent with the intent of the Lifeline Order to expand eligibility to a variety of income and program based criteria.

⁸ Appendix A, §54.409.

implementation of methods and procedures that will take time to develop and test, particularly with regard to verification procedures.

The Montana Public Service Commission (“MTPSC”) has raised a number of questions about the *Order* and adopted a motion on March 15, 2012 to seek industry comments on the effects of the *Lifeline Order*. The MTPSC intends to schedule a Roundtable to discuss such concerns and what actions may be necessary for the MTPSC and/or the Montana Legislature to undertake in light of the changes adopted by the *Lifeline Order*. Among the issues raised is whether the MTPSC will need to revise its rules. Such a rulemaking would take weeks, and more likely months to undertake. As for statutory amendment, the Montana Legislature does not convene until January, 2013.

In conclusion, MTA concurs with the Petitioners’ comments and urges the Commission, *at a minimum*, to grant their request for: 1) a waiver of the *Order’s* effective date until October 1, 2012; and 2) clarification of the *Order’s* certification requirements.

Respectfully Submitted,

/s/

Geoffrey A. Feiss, General Manager
Montana Telecommunications Association
208 North Montana Avenue, Suite 105
Helena, Montana 59601
406-442-4316
gfeiss@telecomassn.org

March 20, 2012